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 Special Appearance (*pro hac vice* application pending)

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

)	
FEDERAL TRADE)	
COMMISSION,)	
)	Case No. <u>2:18-cv-00183-GMN-CWH</u>
Petitioner,)	
)	
v.)	Motion to Dismiss for Lack of
)	Personal Jurisdiction, for
DONOR RELATIONS,)	Insufficient Service, and for
LLC, and COURTESY)	Insufficient Process Made by Special
CALL, INC.,)	Appearance
)	
Respondents.)	
)	

COME NOW purported Respondents Donor Relations, LLC and
 Courtesy Call, Inc. (the “Purported Respondents”), who appear specially
 through undersigned counsel *pro hac vice* (*pro hac vice* applications
 pending), not as a general appearance but in a limited capacity to
 maintain objections to personal jurisdiction, and hereby respectfully
 move to dismiss the Petition for lack of personal jurisdiction pursuant
 to Fed. R. Civ. P. 12(b)(2), (4) and (5).

Conference with Opposing Counsel

The undersigned counsel conferred with counsel for the Petitioner Federal Trade Commission (“FTC”) regarding this motion, and can advise that the FTC opposes this motion on grounds the FTC is not required to obtain and serve the Purported Respondents with a summons.

Argument

It is well attested to that in the absence of a properly served summons, there cannot be personal jurisdiction. Fed. R. Civ. P. 4(a). The necessity of a summons rests on the Fifth Amendment constitutional foundation of affording Due Process to American citizens: “The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. . . . It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.” *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

The urgency of a properly issued summons has been amply illustrated by the Supreme Court: “Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.” *Omni Capital Int’l v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987). In turn, “service of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served.” *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444-45 (1946). This Circuit also reiterates this fundamental principle:

1 Defendants must be served in accordance with Rule 4(d) of
2 the Federal Rules of Civil Procedure, or there is no personal
3 jurisdiction. . . Neither actual notice . . . nor simply naming
4 the person in the caption of the complaint. . . will subject
5 defendants to personal jurisdiction if service was not made
6 in substantial compliance with Rule 4.

7 *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982) (referring to
8 Rule 4 prior to the revision and renumbering of the rule in 1987).

9 Here, no summons was even issued, much less served, upon either
10 Purported Respondent, nor upon a registered agent of those companies,
11 as required by Fed. R. Civ. P. 4 and 5. Notably, the Court's Order to
12 Show Cause (Doc. 3, p. 3), specifically cites Fed. R. Civ. P. 81(a)(5)
13 which reads: "These rules apply to proceedings to compel testimony or
14 the production of documents through a subpoena issued by a United
15 States officer or agency under a federal statute, except as otherwise
16 provided by statute, by local rule, or by court order in the proceedings."
17 Fed. R. Civ. P. 4 and 5 are part of "these rules" referred to in Fed. R.
18 Civ. P. 81(a)(5). Consequently, when the Court's Order to Show Cause
19 says the "petition and exhibits filed therewith, shall be served forthwith
20 by Petitioner upon Respondents or their counsel, using as expeditious
21 means as practicable," the order naturally intended service in
22 compliance with the Federal Rules of Civil Procedure, including the
23 bedrock requirement of a summons.

24 **Conclusion**

25 **Wherefore**, for all the foregoing reasons, the Purported
26 Respondents move to dismiss the FTC's enforcement petition under

1 Fed. R. Civ. P. 12(b)(2), (4), and (5) for lack of personal jurisdiction, lack
2 of proper service of process, and insufficient process.

3 Respectfully submitted this 7th day of February, 2018.

4 THE BERNHOFT LAW FIRM, S.C.
5 Attorneys for Donor Relations, LLC and
6 for Courtesy Call, Inc.

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The undersigned hereby certifies that this document was served via the Court's ECF system and that opposing counsel is registered as an ECF user with this Court.

1 Respectfully submitted this 7th day of February, 2018.

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4 for Courtesy Call, Inc.

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